

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/08/2002

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Second Appeal No.1373 of 2002 Second Appeal No. 1374 of 2002

S. Kathamuthu .. Appellant in
both S.As.
-Vs-

S. Mahalingam .. Respondent in
both S.As.

Appeal against the common judgment and decree dated 20.11.2001 made in Cross Objection No.23 of 2001 and A.S.No.16 of 2001, on the file of the learned Additional District Judge, Karaikkal, against the judgment and decree dated 27.2.2001 made in O.S.No.95 of 2000 on the file of the learned Principal District Munsif, Karaikkal.

!For Appellant : Mr.N. Jeyabalan

^For Respondent : -----

:J U D G M E N T

The appellant is the defendant in O.S.No.95 of 2000 on the file of the learned Principal District Munsif, Karaikkal, laid by the respondent/plaintiff for permanent injunction, alleging that the appellant/defendant, who is nonetheless the brother of the respondent/plaintiff, was attempting to interfere with the peaceful possession and enjoyment of the respondent/plaintiff, who was enjoying the suit property as a cultivating tenant as evident from the Adangal extract which was marked as exhibit A1.

2. The suit was resisted by the appellant/defendant based on exhibits B2 to B6.

3. Upon the above rival contentions, the learned Principal District Munsif, Karaikal, framed the following issues:

- (i) Whether it is true that the plaintiff is the cultivating tenant of the suit property and he was in possession and enjoyment of the suit property as on the date of presentation of the plaint?
- (ii) Whether the plaintiff is entitled to an order of permanent injunction as prayed by him?

(iii) Whether the plaintiff is entitled to a judgment and decree as prayed for?

4. To substantiate the contention, the plaintiff examined himself as PW1, apart from another independent witnesses, viz. one Anandaraj as PW2 and marked Adangal certificate issued by the Revenue Inspector, Nedungadu, dated 13.10.1995, as exhibit A1.

5. The appellant/defendant examined himself as DW1 and placed reliance on exhibits B2 to B6 referred to above, which are admittedly of the year 1986 to 1989.

6. The learned Principal District Munsif, Karaikal, by decree and judgment dated 27.2.2001 in O.S.No.95 of 2001, appreciating the oral and documentary evidence on record, holding that both the respondent/plaintiff and the appellant/defendant were cultivating tenants of the suit property and neither of them had proved their exclusive possession over the suit property, in the light of the documents exhibits B2 to B6, which admittedly carried the name of the respondent/plaintiff and the appellant/defendant as the cultivating tenants, and finding the balance of convenience was not in favour of the respondent/plaintiff alone, decided both the issues against him and dismissed the suit.

7. Aggrieved by the said judgment and decree dated 27.2.2001 made in O.S.No.95 of 2001, the appellant/defendant preferred A.S.No.16 of 2001 on the file of the learned Additional District Judge, Karaikal, against the finding that the appellant/ defendant was not in exclusive possession of the suit property and the respondent/plaintiff filed Cross Appeal No.23 of 2001 on the file of the learned Additional District Judge, Karaikal.

8. The learned Additional District Judge, Karaikal, by decree and judgment dated 20.11.2001 in A.S.No.16 of 2001 and Cross Appeal No.23 of 201, finding that the exhibits B2 to B6 relied upon by the appellant/defendant were related to the year 1986 to 1989, whereas exhibit A1, the adangal extract, relied upon the respondent/plaintiff was related to year 1995, which corroborated the independent evidence of PW2, who deposed that the respondent/plaintiff alone was cultivating the suit land, set aside the finding of the learned Principal District Munsif, Karaikal, that the respondent/plaintiff and the appellant/defendant were the joint cultivating tenants of the suit property and neither of them were in exclusive possession of the suit property and further held that the learned Principal District Munsif, Karaikal, failed to appreciate exhibit A1 dated 13.10.1995, the adangal extract issued by the revenue authorities, which was the latest document, and would prevail over the documents, viz. exhibits B2 to B6 related to the year 1986 to 1989, dismissed the appeal and allowed the Cross Appeal. Hence, the above Second Appeals.

9. The learned counsel for the appellant/defendant raises the following substantial questions of law.

(a) Whether the Appellate Authority erred in decreeing the suit in toto against the plaintiff's admission in B1 and B11 that the appellant is in exclusive possession of the suit property?

(b) Whether the admission of the parties to the suit before a judicial forum could be ignored on the basis of ' Adangal' which is not the conclusive proof of possession?

(c) Whether the suit is maintainable since the actual owner of the property is not impleaded as a party to the above proceedings?

10. It is well settled in law that in a matter relating to cultivating tenancy, the Civil Court ceases its jurisdiction to decide who is the cultivating tenant and also to decide who has to be recorded as tenant under the Record of Tenancy Rights Act. Therefore any decision of the civil Court granting or refusing injunction as prayed for shall be subject to the decision of the Revenue authority and appellate authority constituted under the relevant Act.

11. If that be so, the injunction granted by the Appellate Court, which happened to be purely based on exhibit A1 & the adangal extract, no doubt, cannot be a conclusive proof in granting the relief of permanent injunction, as prayed for by the respondent/plaintiff. But the appellant/defendant is not entitled to seek exclusive possession based on exhibits B2 to B6, which admittedly speak that both the respondent/plaintiff and the appellant/defendant are cultivating tenants of the suit property, for which reason alone the Appeal was rightly dismissed by the learned Additional District Judge, Karaikal. The first substantial question of law, referred to above, is answered that the Appellate Court is right in dismissing the appeal, rejecting the plea of exclusive possession of the appellant/ defendant, based on exhibits B1 to B11.

12. With regard to the second substantial question of law, whether the Appellate Court is right in ignoring the documents exhibits B2 to B6 on the basis of Adangal extract marked as exhibit A1, I am obliged to note that exhibit B13 is the summons issued by the Tahsildar to the appellant/defendant, which was marked by the appellant/defendant himself, only reflects that even as on date, there is a dispute pending before the revenue authorities with regard to cultivating tenants of the suit property. If that be so, whether the respondent/plaintiff or the appellant/ defendant is entitled to be recorded as a tenant in the Record of Tenancy Rights Act, when the proceedings is still pending before the Revenue Court? It is only under such context, the learned Additional District Judge, appreciating the evidence adduced by the respondent/plaintiff, viz. exhibit A1 & the adangal extract, granted an order of injunction against the appellant/defendant. Therefore, in my considered opinion, the earlier proceedings exhibits B2 to B6 relied upon by the appellant/defendant, wherein the names of both the respondent/plaintiff and the appellant/defendant find place is still continues to be an issue before the authorities and the only document issued by the Revenue Inspector is exhibit A1 which shall prevail, even though the same itself would not be a conclusive proof to hold that the respondent/ plaintiff is entitled to permanent injunction. But the proceedings before the Revenue authorities with regard to the cultivating tenancy between the respondent/plaintiff and the appellant/defendant, as evident from exhibit B13, the only remedy available before both the parties are to work out their rights before the revenue authorities. Therefore, the admission of the parties with regard to the

possession, based on the adangal extract before the judicial forum itself cannot be a conclusive proof to decide as to the right of cultivating tenancy between the parties to the suit. The issue is answered accordingly.

13. With regard to third substantial question of law, since the issue between the appellant/defendant and respondent/plaintiff is only with regard to the cultivating tenancy of the suit property, based on the oral and documentary evidence adduced before them, has to be decided by the revenue authorities. The non joinder of the owner in the suit is immaterial as the decree in the suit itself shall be subject to the finding of the revenue authorities in the proceedings initiated under the Cultivating Tenants Protection Act, as it is well settled in law that the issue relating to the cultivating tenancy cannot be decided by the civil Court as per the decision of this Court in PERUMAL Vs. CHINNA KUPPANNA GOUNDER reported in (1981) II MLJ (1), wherein it is held as under:

"... the redemption of a mortgage provided for under Section 6, if permitted by the Tahsildar, would snap the relationship of mortgagor and the mortgagee between the debtor and the creditor and a certificate of redemption granted by the Tahsildar in the prescribed form would be evidence of redemption. That would mean that the relationship of mortgagor and the mortgagee no longer subsists and the mortgage cannot form the subject-matter of a suit before a civil Court. In other words, the exercise of the powers conferred on the Tahsildar under Sections 5 and 6 of the Act and the granting of relief under Section 4(1)(e) and (f) of the Act, would really wipe out the cause of action itself for the institution of the suit, be it on a pledge or on a mortgage."

14. Finding no ground to interfere with the above finding of the appellate authority, the second appeals are dismissed, making it clear that the appellant/defendant and respondent/plaintiff are at liberty to approach the Revenue authorities for appropriate relief and the same shall be decided by the revenue authorities independently, without being prejudiced by any of the findings by this Court, much less by the Courts below in the civil proceedings.

In the result, the second appeals are dismissed. No costs.
Consequently, CMP Nos.11376 and 11377 of 2002 are also dismissed.

To

1. The Principal District Munsif
Karaikal.

2. The Additional District Judge
Karaikal.□